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**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

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| TRANSMITTAL FORM (to be used for all correspondence after initial filing) | | Application Number | 10/070,791 |
| | | Filing Date | August 5, 2002 |
| | | First Named Inventor | Piet Herdewijn |
| | | Art Unit | 1624 |
| | | Examiner Name | Mark L. Berch |
| Total Number of Pages in This Submission | 4 | Attorney Docket Number | 0702-020249 |

ENCLOSURES (Check all that apply)

| | | |
|---|--|--|
| <input type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Preliminary Amendment <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Documents <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawings (1 sheet attached to Amendment.) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition for Extension of Time <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ | <input type="checkbox"/> After Allowance communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below) Petition From Requirement For Restriction Under C.F.R. § 1.144 (3 pp.) |
| Remarks | | |

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

| | | |
|-------------------------------|---------------------|-------------------------|
| Firm or Individual name | Gwen R. Wood, Ph.D. | Registration No. 51,027 |
| Signature | <i>Gwen R. Wood</i> | |
| Date | April 13, 2005 | |

CERTIFICATE OF TRANSMISSION/MAILING

| | | | |
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| I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below. | | | |
| Typed or printed name | Helen Gerace | | |
| Signature | <i>Helen Gerace</i> | Date | April 13, 2005 |

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{W0181557.1}



Appl. No. 10/070,791
Petition dated April 13, 2005
Attorney Docket No. 702-020249

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/070,791 Confirmation No. 9473
Applicants : Piet Herdewijn et al.
Filed : August 5, 2002
Title : Carbocyclic Nucleosides and Process for Obtaining Such
Group Art Unit : 1624
Examiner : Mark L. Berch
Customer No. : 28289

Attention: Director of Art Unit 1624
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION FROM REQUIREMENT FOR RESTRICTION UNDER C.F.R. § 1.144

Sir:

Applicants respectfully request that the restriction requirement issued by the Examiner in the Office Action, dated May 18, 2004, be reconsidered under C.F.R. § 1.144, and that non-elected claims 8, 9, 11, 13 and 24-34, as well as those parts of claims 1-7, 10, 12, 14-23, 35-39, 41, 43 and 44 be rejoined in this application. In support of this petition, the undersigned sets forth as follows:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Attention: Director of GAU 1624, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on April 13, 2005.

Helen Gerace

(Name of Person Mailing Paper)

Helen Gerace April 13, 2005
Signature Date

1. The Examiner asserted in an Office Action, dated October 14, 2004, that the “traversal on the grounds that the general inventive concept is the cyclohexenyl moiety” is “not found persuasive because in fact, a cyclohexenyl ring is not required to be present” in the compounds of the invention and that “the ring can in fact be e.g. a benzene ring.” The Examiner further asserted that the “nucleobase is essential for antiviral activity and hence restriction is proper on the basis of its nature.”

2. In a response to the Office Action of October 14, 2004, Applicants amended base claim 1 to recite that “Z represents the presence of one double bond in the six membered carbocyclic ring.” Thus, the claimed invention now is limited solely to compounds that contain a cyclohexenyl moiety.

3. Applicants hereby submit that the single technical inventive feature that links all of the claims is an unsaturated cyclohexenyl moiety, and not a nucleobase or nucleobase analogue (referred to as “B”) asserted by the Examiner.

4. In particular, the unsaturated cyclohexenyl moiety is critical for providing the antiviral activity of the claimed compounds because the specific biological activity of the claimed compounds is due to the sugar analogue portion of the cyclohexenyl moiety and not from the use of a nucleobase or nucleobase analogue.

5. In this regard, comparison can be made to other antiviral compounds, such as 3'-azido-3'-deoxythymidine (AZT) and 3'-thai-2',3'-dideoxycytidine (3-TC), which all are nucleobase analogues with modifications in the sugar portion of the compound, similar to the compounds of the claimed invention. Furthermore, AZT and 3-TC also have the same nucleobases as the claimed invention but differ from the claimed invention with regard to their respective sugar moieties.

6. Applicants hereby stipulate that the related inventions to which the Examiner has issued a restriction requirement, namely, the nucleobase or nucleobase analogues, are not patentable over one another, and point out that such a “clear and unambiguous admission that the inventions are not patentable over each other” is sufficient to withdraw the restriction requirement issued by the Examiner. In re Lee, 199 U.S.P.Q. 108, 109 (Comm’r Pats. 1978).


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The Commissioner of Patents and Trademarks is hereby authorized to charge any fees which may be required to Deposit Account No. 23-0650.

Applicants respectfully request reconsideration and withdrawal of the restriction requirement.

Respectfully submitted,

THE WEBB LAW FIRM

By 

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